



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to alleged cause and a monetary order for damage to the rental unit.

The landlord appeared; the tenant did not appear.

The landlord gave evidence that he served the tenant with his Application for Dispute Resolution and Notice of Hearing by registered mail on February 26, 2013. The landlord supplied the evidence of the registered mail containing the tracking number.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The landlord said that he submitted a copy of the 1 Month Notice to End Tenancy for Cause (the "Notice"), which is the subject of this dispute; however this Notice was not enclosed in the file for the hearing.

During the hearing I asked the landlord to describe the content of the Notice and I asked that it be faxed to me directly after the hearing. The Notice was immediately faxed by the landlord to me and I confirmed the content was as described by the landlord verbally.

*Preliminary issue #2*-The landlord requested that the portion of his application for dispute resolution dealing with a request for a monetary order be waived; as a result I have amended the landlord's application, excluding his request for such an order.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to alleged cause?

Background and Evidence

The landlord said that there is no written tenancy agreement as his former property manager who arranged this tenancy failed to secure one. The landlord gave evidence that this tenancy began on December 1, 2012, monthly rent is \$900.00, and the tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The landlord submitted evidence that the former property manager served the tenant with a 1 Month Notice to End Tenancy for Cause on December 23, 2012, by leaving it with the tenant, listing an effective end of tenancy of January 30, 2013. The property manager was not available for testimony. I therefore was unable to conclude that the tenant was served with the Notice.

The landlord gave further evidence that he re-served the tenant the same Notice on January 12, 2013, both by posting it on the tenant's door and by putting another copy under the tenant's door. I concluded that the tenant was served with the Notice by the landlord.

Section 90 of the Act states that documents served by posting on the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on January 15, 2013.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective vacancy date listed on the Notice is changed to February 28, 2013.

The Notice explained that the tenant had ten days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

I have no evidence before me that the tenant filed an application to dispute the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

I find the tenant was served a 1 Month Notice to End Tenancy for Cause, did not apply to dispute the Notice within ten days of service and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

### Conclusion

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. Costs of such enforcement may be recoverable from the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act* (the "Act") and is being mailed to both the applicant and the respondent.

Dated: March 14, 2013

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Residential Tenancy Branch

